

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1229

AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-4-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 8. (a) The department shall develop and promote programs designed to make the best use of the resources of the state so as to assure a balanced economy and continuing economic growth for Indiana and for those purposes may do the following:

- (1) Cooperate with federal, state, and local governments and agencies in the coordination of programs to make the best use of the resources of the state.
- (2) Receive and expend all funds, grants, gifts, and contributions of money, property, labor, interest accrued from loans made by the department, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government. The department:
  - (A) may accept federal grants for providing planning assistance, making grants, or providing other services or functions necessary to political subdivisions, planning commissions, or other public or private organizations;
  - (B) shall administer these grants in accordance with their terms; and
  - (C) may contract with political subdivisions, planning

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commissions, or other public or private organizations to carry out the purposes for which the grants were made.

(3) Direct that assistance, information, and advice regarding the duties and functions of the department be given the department by any officer, agent, or employee of the state. The head of any other state department or agency may assign one (1) or more of the department's or agency's employees to the department on a temporary basis, or may direct any division or agency under the department's or agency's supervision and control to make any special study or survey requested by the director.

(b) The department shall perform the following duties:

(1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.

(2) Plan, direct, and conduct research activities.

(3) Develop and implement industrial development programs to encourage expansion of existing industrial, commercial, and business facilities within Indiana and to encourage new industrial, commercial, and business locations within Indiana.

(4) Assist businesses and industries in acquiring, improving, and developing overseas markets and encourage international plant locations within Indiana. The director, with the approval of the governor, may establish foreign offices to assist in this function.

(5) Promote the growth of minority business enterprises by doing the following:

(A) Mobilizing and coordinating the activities, resources, and efforts of governmental and private agencies, businesses, trade associations, institutions, and individuals.

(B) Assisting minority businesses in obtaining governmental or commercial financing for expansion, establishment of new businesses, or individual development projects.

(C) Aiding minority businesses in procuring contracts from governmental or private sources, or both.

(D) Providing technical, managerial, and counseling assistance to minority business enterprises.

(6) Assist in community economic development planning and the implementation of programs designed to further this development.

(7) Assist in the development and promotion of Indiana's tourist resources, facilities, attractions, and activities.

(8) Assist in the promotion and marketing of Indiana's agricultural products, and provide staff assistance to the director in fulfilling

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the director's responsibilities as commissioner of agriculture.

(9) Perform the following energy related functions:

(A) Assist in the development and promotion of alternative energy resources, including Indiana coal, oil shale, hydropower, solar, wind, geothermal, and biomass resources.

(B) Encourage the conservation and efficient use of energy, including energy use in commercial, industrial, residential, governmental, agricultural, transportation, recreational, and educational sectors.

(C) Assist in energy emergency preparedness.

(D) Not later than January 1, 1994, establish:

(i) specific goals for increased energy efficiency in the operations of state government and for the use of alternative fuels in vehicles owned by the state; and

(ii) guidelines for achieving the goals established under item (i).

(E) Establish procedures for state agencies to use in reporting to the department on energy issues.

(F) Carry out studies, research projects, and other activities required to:

(i) assess the nature and extent of energy resources required to meet the needs of the state, including coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable energy, and other energy resources;

(ii) promote cooperation among government, utilities, industry, institutions of higher education, consumers, and all other parties interested in energy and recycling market development issues; and

(iii) promote the dissemination of information concerning energy and recycling market development issues.

(10) Implement any federal program delegated to the state to effectuate the purposes of this chapter.

(11) Promote the growth of small businesses by doing the following:

(A) Assisting small businesses in obtaining and preparing the permits required to conduct business in Indiana.

(B) Serving as a liaison between small businesses and state agencies.

(C) Providing information concerning business assistance programs available through government agencies and private

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sources.

(12) Assist the Indiana commission for agriculture and rural development in performing its functions under IC 4-4-22.

(13) Develop and promote markets for the following recyclable items:

- (A) Aluminum containers.
- (B) Corrugated paper.
- (C) Glass containers.
- (D) Magazines.
- (E) Steel containers.
- (F) Newspapers.
- (G) Office waste paper.
- (H) Plastic containers.
- (I) Foam polystyrene packaging.
- (J) Containers for carbonated or malt beverages that are primarily made of a combination of steel and aluminum.

(14) Produce an annual recycled products guide and at least one (1) time each year distribute the guide to the following:

- (A) State agencies.
- (B) The judicial department of state government.
- (C) The legislative department of state government.
- (D) State educational institutions (as defined in IC 20-12-0.5-1).
- (E) Political subdivisions (as defined in IC 36-1-2-13).
- (F) Bodies corporate and politic created by statute.

A recycled products guide distributed under this subdivision must include a description of supplies and other products that contain recycled material and information concerning the availability of the supplies and products.

**(15) Beginning July 1, 2005, the department shall identify, promote, assist, and fund home ownership education programs conducted throughout Indiana by nonprofit counseling agencies certified by the department using funds appropriated under IC 4-4-3-23(e). The department shall adopt rules under IC 4-22-2 governing certification procedures and counseling requirements for nonprofit home ownership counselors. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the department in implementing this subdivision.**

(c) The department shall submit a report to the general assembly

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before October 1 of each year concerning the availability of and location of markets for recycled products in Indiana. The report must include the following:

- (1) A priority listing of recyclable materials to be targeted for market development. The listing must be based on an examination of the need and opportunities for the marketing of the following:
  - (A) Paper.
  - (B) Glass.
  - (C) Aluminum containers.
  - (D) Steel containers.
  - (E) Bi-metal containers.
  - (F) Glass containers.
  - (G) Plastic containers.
  - (H) Landscape waste.
  - (I) Construction materials.
  - (J) Waste oil.
  - (K) Waste tires.
  - (L) Coal combustion wastes.
  - (M) Other materials.
- (2) A presentation of a market development strategy that:
  - (A) considers the specific material marketing needs of Indiana; and
  - (B) makes recommendations for legislative action.
- (3) An analysis that examines the cost and effectiveness of future market development options.

SECTION 2. IC 4-4-3-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: **Sec. 23. (a) The home ownership education account within the state general fund is established to support the home ownership education programs established under section 8(b)(15) of this chapter. The account is administered by the department.**

**(b) The home ownership education account consists of fees collected under IC 24-9-9.**

**(c) The expenses of administering the home ownership education account shall be paid from money in the fund.**

**(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.**

**(e) Money in the account may be spent only after appropriation**



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by the general assembly.

SECTION 3. IC 4-6-3-3, AS AMENDED BY P.L.2-2002, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 3. If the attorney general has reasonable cause to believe that a person may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation conducted to determine if a person is or has been engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6, IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, **IC 24-9**, IC 25-1-7, IC 32-34-1, or any other statute enforced by the attorney general, only the attorney general may issue in writing, and cause to be served upon the person or the person's representative or agent, an investigative demand that requires that the person served do any combination of the following:

- (1) Produce the documentary material for inspection and copying or reproduction.
- (2) Answer under oath and in writing written interrogatories.
- (3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

SECTION 4. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

**Chapter 12. Homeowner Protection Unit**

**Sec. 1. As used in this chapter, "unit" refers to the homeowner protection unit established under this chapter.**

**Sec. 2. The attorney general shall establish a homeowner protection unit to enforce IC 24-9 and to carry out this chapter.**

**Sec. 3. (a) Beginning July 1, 2005, the unit shall do the following:**

- (1) Investigate deceptive acts in connection with mortgage lending.
- (2) Investigate violations of IC 24-9.
- (3) Institute appropriate administrative and civil actions to redress:
  - (A) deceptive acts in connection with mortgage lending; and
  - (B) violations of IC 24-5-0.5 and IC 24-9.
- (4) Cooperate with federal, state, and local law enforcement agencies in the investigation of:
  - (A) deceptive acts in connection with mortgage lending;

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(B) criminal violations involving deceptive acts in connection with mortgage lending; and

(C) violations of IC 24-5-0.5 and IC 24-9.

(b) The attorney general shall adopt rules under IC 4-22-2 to the extent necessary to organize the unit.

Sec. 4. (a) The following may cooperate with the unit to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

(6) The Indiana housing finance authority.

(7) The department of state revenue.

(8) The state police department.

(9) A prosecuting attorney.

(10) Local law enforcement agencies.

(11) The department of commerce.

(b) Notwithstanding IC 5-14-3, the entities listed in subsection (a) may share information with the unit.

Sec. 5. The attorney general may file complaints with any of the entities listed in section 4 of this chapter to carry out this chapter and IC 24-9.

Sec. 6. The establishment of the unit and the unit's powers does not limit the jurisdiction of an entity described in section 4 of this chapter.

Sec. 7. The attorney general and an investigator of the unit may do any of the following when conducting an investigation under section 3 of this chapter:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of a person to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

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**Sec. 8. The unit shall cooperate with the department of commerce in the development and implementation of the home ownership education programs established under IC 4-4-3-8(b)(15).**

**Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.**

**(b) The homeowner protection unit account consists of fees collected under IC 24-9-9.**

**(c) The expenses of administering the homeowner protection unit account shall be paid from money in the account.**

**(d) The treasurer of state shall invest the money in the homeowner protection unit account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.**

**(e) Before July 1, 2007:**

**(1) money in the homeowner protection unit account at the end of the state fiscal year does not revert to the state general fund; and**

**(2) there is annually appropriated to the attorney general from the homeowner protection unit account money sufficient for carrying out the purposes of this chapter and IC 24-9.**

**(f) After June 30, 2007:**

**(1) money in the homeowner protection unit account at the end of a state fiscal year reverts to the state general fund; and**

**(2) money in the homeowner protection unit account may only be spent after appropriation by the general assembly.**

**SECTION 5. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The following securities are exempted from the registration requirements of section 3 of this chapter:**

**(1) A security (including a revenue obligation) issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one (1) or more of the foregoing or a certificate of deposit for any of the foregoing.**

**(2) A security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency, or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the**

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security is recognized as a valid obligation by the issuer or guarantor.

(3) A security issued by and representing an interest in or a debt of, or guaranteed by a bank organized under the laws of the United States, a bank, savings institution, or trust company organized and supervised under the laws of a state, a federal savings association, a savings association organized under the laws of a state and authorized to do business in Indiana, a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state, or a corporation or organization whose issuance of securities is required by any other law to be passed upon and authorized by the department of financial institutions or by a federal agency or authority.

(4) A security issued or guaranteed by a railroad or other common or contract carrier, a public utility, or a common or contract carrier or public utility holding company. However, an issuer or guarantor must be subject to regulation or supervision as to the issuance of its own securities by a public commission, board, or officer of the government of the United States, of a state, territory, or insular possession of the United States, of a municipality located in a state, territory, or insular possession, of the District of Columbia, or of the Dominion of Canada or a province of Canada.

(5) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, or on any other exchange approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(6) A promissory note, draft, bill of exchange, or banker's acceptance that is evidence of:

- (A) an obligation;
- (B) a guarantee of an obligation;
- (C) a renewal of an obligation; or
- (D) a guarantee of a renewal of an obligation;

to pay cash within nine (9) months after the date of issuance, excluding grace days, that is issued in denominations of at least fifty thousand dollars (\$50,000) and receives a rating in one (1)

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of the three (3) highest rating categories from a nationally recognized statistical rating organization.

(7) A security issued in connection with an employee stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(8) A security issued by an association incorporated under IC 15-7-1.

(9) A security that is an industrial development bond (as defined in Section 103(b)(2) of the Internal Revenue Code of 1954) the interest of which is excludable from gross income under Section 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the application of paragraph (4) or (6) of Section 103(b) of the Internal Revenue Code of 1954 (determined as if paragraphs (4)(A), (5), and (7) were not included in Section 103(b)), paragraph (1) of Section 103(b) does not apply to the security.

(10) A security issued by a nonprofit corporation that meets the requirements of Section 103(e) of the Internal Revenue Code of 1954 and is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

(11) A security designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automatic Quotation National Market System or any other national market system approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(12) A security that is a "qualified bond" (as defined in Section 141(e) of the Internal Revenue Code, as amended).

(b) The following transactions are exempted from the registration requirements of section 3 of this chapter:

(1) An isolated nonissuer offer or sale, whether effected through a broker-dealer or not.

(2) A nonissuer sale effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy.

(3) A nonissuer offer or sale by a registered broker-dealer, acting either as principal or agent, of issued and outstanding securities if the following conditions are satisfied:

(A) The securities are sold at prices reasonably related to the current market price at the time of sale, and if the registered broker-dealer is acting as agent, the commission collected by the registered broker-dealer on account of the sale is not in

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excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

(B) The securities do not constitute an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(C) Either:

(i) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen (18) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is published in a securities manual approved by the commissioner;

(ii) the issuer is required to file reports with the Securities and Exchange Commission pursuant to sections 13 and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and is not delinquent in the filing of the reports on the date of the sale; or

(iii) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than sixteen (16) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is on file with the commissioner. The information required by this item to be on file with the commissioner must be on a form and made in a manner as the commissioner prescribes. The fee for the initial filing of the form shall be twenty-five dollars (\$25). The fee for the annual renewal filing shall be fifteen dollars (\$15). When a filing is withdrawn or is not completed by the issuer, the commissioner must retain the filing fee.

(D) There has been compliance with section 6(1) of this chapter.

(E) Unless the issuer is registered under the Investment Company Act of 1940, all the following must be true at the time of the transaction:

(i) The security belongs to a class that has been in the hands of the public for at least ninety (90) days.

(ii) The issuer of the security is a going concern, is actually

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engaged in business, and is not in bankruptcy or receivership.

(iii) Except as permitted by order of the commissioner, the issuer and any predecessors have been in continuous operation for at least five (5) years. An issuer or predecessor is in continuous operation only if the issuer or predecessor has gross operating revenue in each of the five (5) years immediately preceding the issuer's or predecessor's claim of exemption and has had total gross operating revenue of at least two million five hundred thousand dollars (\$2,500,000) for those five (5) years or has had gross operating revenue of at least five hundred thousand dollars (\$500,000) in not less than three (3) of those five (5) years.

The commissioner may revoke the exemption afforded by this subdivision with respect to any securities by issuing an order:

(i) if the commissioner finds that the further sale of the securities in this state would work or tend to work a fraud on purchasers of the securities;

(ii) if the commissioner finds that the financial condition of the issuer is such that it is in the public interest and is necessary for the protection of investors to revoke or restrict the exemption afforded by this subsection; or

(iii) if the commissioner finds that, due to the limited number of shares in the hands of the public or due to the limited number of broker-dealers making a market in the securities, there is not a sufficient market for the securities so that there is not a current market price for the securities.

(4) A transaction between the issuer or other person on whose behalf the offering is made by an underwriter, or among underwriters.

(5) A transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness, is offered and sold as a unit.

(6) A transaction by an executor, administrator, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or a person acting in a trust or fiduciary capacity where the transaction is effected pursuant to the authority of or subject to approval by a court of competent jurisdiction.

(7) A transaction executed by a bona fide pledgee without any

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purpose of evading this chapter.

(8) An offer or sale to a bank, a savings institution, a trust company, an insurance company, an investment company (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-52)), a pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

(9) The offer or sale of securities of an issuer:

(i) to a person who is:

(A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;

(B) a director, an executive officer, or a general partner of a general partner of the issuer; or

(C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;

(ii) to an entity affiliated with the issuer;

(iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or

(iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.

(10) The offer or sale of a security by the issuer of the security if all of the following conditions are satisfied:

(A) The issuer reasonably believes that either:

(i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or

(ii) there are no more than twenty (20) purchasers in Indiana.

In either case, there shall be excluded in determining the number of purchasers a purchaser whom the issuer reasonably

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believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

(B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.

(C) The issuer reasonably believes that each purchaser of the securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:

(i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and

(ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

(i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and

(ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000), the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

(i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and

(ii) unless clearly presented in all written materials, a written notification setting forth the name, address, and form of

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organization of the issuer and any affiliate, the nature of the principal businesses of the issuer and any affiliate, and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the ten (10) day period, if:

- (i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and
- (ii) no enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption.

(G) The issuer need not comply with clause (D), (E), or (F) if:

- (i) each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
- (ii) there are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i); or
- (iii) the aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25) and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

(H) If the issuer makes or is required to make a filing with the commissioner under clause (D) or (E), the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

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(I) The commissioner may by rule deny exemption provided in this subdivision to a particular class of issuers, or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration (other than a standby commission) is paid or given for soliciting a security holder in this state.

(12) An offer (but not a sale) of a security for which registration statements or applications have been filed under this chapter and the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either law.

(13) The deposit of shares under a voting-trust agreement and the issue of voting-trust certificates for the deposit.

(14) The offer or sale of a commodity futures contract.

(15) The offer or sale of securities to or for the benefit of security holders incident to a vote by the security holders pursuant to the articles of incorporation or applicable instrument, on a merger or share exchange under IC 23-1-40 or the laws of another state, reclassification of securities, exchange of securities under IC 28-1-7.5, or sale of assets of the issuer in consideration of the issuance of securities of the same or another issuer.

(16) A limited offering transactional exemption, which may be created by rule adopted by the commissioner. The exemption must further the objectives of compatibility with federal exemptions and uniformity among the states.

(c) The commissioner may consider and determine if a proposed sale, transaction, issue, or security is entitled to an exemption accorded by this section. The commissioner may decline to exercise the commissioner's authority as to a proposed sale, transaction, issue, or security. An interested party desiring the commissioner to exercise the commissioner's authority must submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which must be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of one hundred dollars (\$100). After notice to the interested parties as the

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commissioner determines is proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption claimed. An order entered, unless an appeal is taken from it in the manner prescribed in section 20 of this chapter, is binding upon the commissioner and upon all interested parties, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement submitted.

(d) The commissioner may by order deny or revoke an exemption specified in subsection (a)(6), (a)(7), or (b) with respect to a specific security or transaction, if the commissioner finds that the securities to which the exemption applies would not qualify for registration under sections 4 and 5 of this chapter. No order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the order, and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 3 of this chapter by reason of an offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(e) If, with respect to an offering of securities, any notices or written statements are required to be filed with the commissioner under subsection (b)(10), the first filing made with respect to the offering must be accompanied by a filing fee of one hundred dollars (\$100).

**(f) A condition, stipulation, or provision requiring a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.**

SECTION 6. IC 23-2-1-6 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2004]: Sec. 6. (a) An application for registration may be filed by:

- (1) the issuer;
- (2) any other person on whose behalf the offering is to be made;
- or
- (3) a registered broker-dealer.

(b) A person filing an application for registration shall pay a filing fee of one-twentieth of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred fifty dollars (\$250) and may not be more than one thousand dollars (\$1,000).

(c) When an application for registration under subsection (b) is withdrawn before the effective date or a preeffective stop order is entered under section 7 of this chapter, the commissioner shall retain two hundred fifty dollars (\$250) of the fee.

(d) A person filing an amendment to an effective registration which requires an order of the commissioner shall pay a twenty-five dollar (\$25) filing fee.

(e) An application for registration shall specify:

- (1) the amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and
- (3) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by a court or the Securities and Exchange Commission.

(f) A document filed under this chapter within five (5) years preceding the filing of an application for registration may be incorporated by reference in the application for registration if the document is currently accurate.

(g) The commissioner may by rule or otherwise permit the omission of an item of information or document from an application for registration.

(h) In the case of a nonissuer distribution, any part of the information that might otherwise be required under section 5 of this chapter or subsection (i) need not be furnished if the person filing the application for registration produces evidence to the reasonable satisfaction of the commissioner that the person, or the persons on whose behalf the distribution is to be made, cannot furnish that part of the required information without unreasonable effort or expense.

(i) A registration is effective for:

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- (1) two (2) years from its effective date; or
- (2) a shorter period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or the person on whose behalf the offering is being made or by an underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution, except during the time a stop order is in effect under section 7 of this chapter.

(j) So long as a registration is effective, the commissioner may by rule or order require the person who filed the application for registration to file reports, not more often than quarterly, to keep reasonably current the information contained in the application for registration and to disclose the progress of the offering.

(k) The commissioner may by rule or order require as a condition of registration by qualification or coordination:

- (1) that a security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and
- (2) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount.

The commissioner may by rule or order determine the conditions of an escrow or impounding required under this subsection, but the commissioner may not reject a depository solely because of location in another state.

(l) No transferable share is exempt from registration under section 2(b)(3) of this chapter or is qualified for registration under sections 4 or 5 of this chapter unless the issuer has designated a qualified transfer agent to handle all transfers. The commissioner may adopt rules to implement this subsection. The commissioner may by rule or order exempt an issuer, wholly or partially, from the requirements of this subsection.

(m) A registration statement may be amended after its effective date to increase the securities specified to be offered and sold if the public offering price and underwriters' discounts and commissions are not changed from the amounts reported to the commissioner. An amendment becomes effective upon an order of the commissioner. A person filing an amendment must pay a late registration fee of twenty-five dollars (\$25) and a filing fee under subsection (b) for the additional securities proposed to be offered. An amendment relates

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back to the date of the sale of additional securities being registered if the amendment is filed within three (3) months after the date of the sale and the additional filing fee and late registration fee are paid.

(n) As permitted by Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1(c)), securities that are offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that are mortgage-related securities (as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)):

- (1) must comply with all applicable:
  - (A) registration and qualification requirements of this chapter; and
  - (B) rules adopted by the commissioner; and
- (2) shall not be treated as obligations issued by the United States for the purposes of this chapter.

(o) If:

(1) the division:

(A) **does not approve an application for registration by coordination or qualification; and**

(B) **notifies the applicant not later than ten (10) days after the date the application was not approved of a deficiency in the application that, if satisfied, would allow the approval of the application;**

**the applicant may satisfy the deficiency within sixty (60) days after the date described in clause (B); and**

(2) **an applicant does not satisfy the deficiency described in subdivision (1):**

(A) **the application is considered abandoned;**

(B) **the issuer does not receive a refund of the application fee; and**

(C) **no further action is required by the division.**

SECTION 7. IC 23-2-1-15, AS AMENDED BY P.L.270-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

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## (b) The secretary of state:

- (1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and
- (2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial reason, the appealing party shall be reinstated to the appealing party's position without loss of pay. In all other cases, if the decision is favorable to the appealing party, the secretary of state shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost. The hearing and any subsequent proceedings or appeals shall be governed by the provisions of IC 4-15-2 and IC 4-21.5.

(c) Fees and funds of whatever character accruing from the administration of this chapter shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of state in the general fund of the state. Expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, costs of investigations recovered under sections 16(d) and 17.1(c) of this chapter shall be deposited with the treasurer of state to be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter. The funds in the account do not revert to the general fund at the end of any fiscal year.

(d) In connection with the administration and enforcement of the provisions of this chapter, the attorney general shall render all necessary assistance to the securities commissioner upon the commissioner's request, and to that end, the attorney general shall

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employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the securities commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office.

(e) Neither the secretary of state, the securities commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

(f) The commissioner, subject to the approval of the secretary of state, may adopt rules, orders, and forms necessary to carry out this chapter, including rules and forms concerning registration statements, applications, reports, and the definitions of any terms if the definitions are consistent with this chapter. The commissioner may by rule or order allow for exemptions from registration requirements under sections 3 and 8 of this chapter if the exemptions are consistent with the public interest and this chapter.

(g) The provisions of this chapter delegating and granting power to the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based

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on the securities division's investigations is meritorious:

(1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, **which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;**

(3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense.

(i) The securities commissioner shall take, prescribe, and file the oath of office prescribed by law. The securities commissioner, senior investigator, and each deputy are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this chapter, or in serving any process, notice, or order connected with the enforcement of this chapter by whatever officer or authority or court issued. The securities commissioner, the deputy commissioners for enforcement, and the investigators comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) The securities commissioner and each employee of the securities division shall be reimbursed for necessary hotel and travel expenses when required to travel on official duty. Hotel and travel reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

(k) It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except among themselves, or when necessary or appropriate, in a proceeding

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or investigation under this chapter. No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

(l) The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. **A person may not request an interpretive opinion concerning an activity that:**

**(1) occurred before; or**

**(2) is occurring on;**

**the date that the opinion is requested.** The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination.

SECTION 8. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(1) the value of the security when the buyer disposed of the security; and

(2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time

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of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), ~~or~~ 14, **or 26** of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of section 12.1(b) **or 26** of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the person, a person occupying a similar status or performing similar functions, an employee of a person who materially aids in the conduct creating the liability, and a broker-dealer or agent who materially aids in the conduct are also liable jointly and severally with and to the same extent as the person, unless the person who is liable sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(e) A tender specified in this section may be made at any time before entry of judgment.

(f) A cause of action under this statute survives the death of a person who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by the person bringing the action of a violation of this chapter, and not afterwards. No person may sue under this section:

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(1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity.

SECTION 9. IC 23-2-1-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (a) If the commissioner determines, after **notice and opportunity for** a hearing, that any person has violated this chapter, the commissioner may, in addition to or in lieu of all other remedies, impose a civil penalty upon any person who has violated this chapter. This penalty may not exceed ten thousand dollars (\$10,000) for each violation of this chapter found to have been committed. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by any aggrieved party pursuant to section 20 of this chapter.

(b) The commissioner may bring any action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

(c) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 15(c) of this chapter.

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SECTION 10. IC 23-2-1-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26. (a) This section applies to a person engaged in the business of providing advice to others, directly or by means of analyses, reports, or other publications, concerning:**

**(1) the value of securities; or**

**(2) the advisability of:**

**(A) investing in;**

**(B) purchasing; or**

**(C) selling;**

**securities.**

**(b) A person described in subsection (a) may not:**

**(1) employ a device, a scheme, or an artifice to defraud a person; or**

**(2) engage in an act, a practice, or a course of business that operates or would operate as fraud or deceit upon a person.**

SECTION 11. IC 23-2-1-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 27. An administrative action under this chapter survives the death of a person who might have been a respondent.**

SECTION 12. IC 23-2-5-3, AS AMENDED BY P.L.115-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.**

**(b) As used in this chapter, "creditor" means a person:**

**(1) that loans funds of the person in connection with a loan; and**

**(2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.**

**(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.**

**(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.**

**(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring a loan from a third party or any other person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person: whether or not**

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**the person seeking the loan actually obtains the loan.** "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; issue securities backed by the Government National Mortgage Association; make loans insured by the United States Department of Housing and Urban Development; act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means ~~establishing the terms or conditions of a loan with a borrower or prospective borrower~~ **communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.**

(h) As used in this chapter, "originator" means a person engaged in origination activities. **The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).**

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership

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interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 13. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, ~~10~~, 17, ~~and~~ 18, **and 21** of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.
- (5) Any person that:
  - (A) procures;
  - (B) promises to procure; or
  - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) **Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing finance authority established by IC 5-20-1-3.**
- (7) **The Indiana housing finance authority.**
- (8) **Any person authorized to:**
  - (A) **sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;**
  - (B) **issue securities backed by the Government National Mortgage Association;**
  - (C) **make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;**
  - (D) **act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or**

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**(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development.**

**(9)** Any person who is a creditor, or proposed to be a creditor, for any loan.

**(b)** As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

**(c)** As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

**(d)** The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 14. IC 23-15-8-3, AS ADDED BY P.L.277-2001, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) If the department of financial institutions determines that a business entity has violated IC 28-1-20-4, the department of financial institutions shall notify the secretary of state of the violation.

**(b)** The secretary of state shall commence a proceeding under this section to administratively dissolve a business entity if:

(1) the name of the business entity contains the word "bank", "**banc**", or "**banco**"; and

(2) the department of financial institutions determines that the business entity violates IC 28-1-20-4.

**(c)** If the secretary of state commences an administrative dissolution under subsection (b), the secretary of state shall serve the business entity with written notice of the determination under subsection (b)(2). The secretary of state shall, at the same time notice is sent to the business entity, provide a copy of the notice to the department of financial institutions.

**(d)** If a business entity that receives a notice under subsection (c) does not:

(1) correct the grounds for dissolution; or

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(2) demonstrate to the reasonable satisfaction of the department of financial institutions that the grounds for dissolution do not exist;

at any time after sixty (60) days after service of the notice is perfected, the department of financial institutions shall notify the secretary of state in writing of the continuing violation. After receiving the written notice from the department of financial institutions, the secretary of state shall administratively dissolve the business entity by signing a certificate of dissolution that recites the grounds for dissolution and the effective date of the dissolution. The secretary of state shall file the original certificate of dissolution and serve a copy of the certificate of dissolution on the business entity.

(e) A business entity administratively dissolved under this section may carry on only those activities necessary to wind up and liquidate the business entity's affairs.

SECTION 15. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of Construction—(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
- (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

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(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2002~~ **2003**.

SECTION 16. IC 24-4.5-1-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
- (9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
- (10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- (11) **A loan made:**
  - (A) **in compliance with the requirements of; and**
  - (B) **by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing finance authority established by IC 5-20-1-3.**

SECTION 17. IC 24-4.5-7-104, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 104. "Small loan" means a loan:

- (a) with a principal loan amount that is ~~more than~~ **at least** fifty dollars (\$50) and ~~less than four~~ **not more than five** hundred ~~one~~ dollars (~~\$401~~); **(\$500)**; and
- (b) in which the lender holds the borrower's check **or receives the borrower's written authorization to debit the borrower's account** under an agreement, either express or implied, for a specific period before the lender:
  - (i) offers the check for deposit or presentment; or
  - (ii) ~~seeks exercises the~~ authorization to ~~transfer or withdraw funds from~~ **debit** the borrower's account.

SECTION 18. IC 24-4.5-7-105, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 105. "Principal" means the total of:

- (a) the net amount paid to, receivable by, or paid or payable from the account of the ~~consumer~~; **borrower**; and
- (b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a).

SECTION 19. IC 24-4.5-7-107, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

- (a) renewing;
- (b) repaying;
- (c) refinancing; or
- (d) consolidating;

a small loan with the proceeds of another small loan made to the same ~~consumer~~ **borrower** by a lender.

SECTION 20. IC 24-4.5-7-108, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same ~~consumer~~ **borrower** not later than seven (7) calendar days after a previous small loan made to that ~~customer~~ **borrower** is paid in full.

SECTION 21. IC 24-4.5-7-109, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 109. "Paid in full" means the termination of a small loan through:

- (1) the payment of the ~~consumer's~~ **borrower's** check by the drawee bank or authorized electronic transfer;

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(2) the return of a check to a ~~consumer borrower~~ who redeems it for consideration;

(3) **the authorized debiting of the borrower's account;** or

(4) any other method of termination.

SECTION 22. IC 24-4.5-7-110, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 110. "Monthly ~~net gross~~ income" means the income received by the ~~consumer borrower~~ in the ~~four (4) week~~ **thirty (30) day** period preceding the ~~consumer's borrower's~~ application for a small loan under this chapter and exclusive of any income other than regular ~~net gross~~ pay received, or as otherwise determined by the department.

SECTION 23. IC 24-4.5-7-201, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 201. (1) Finance charges on the first ~~one two~~ hundred **fifty** dollars (~~\$100~~) (**\$250**) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than ~~one two~~ hundred **fifty** dollars (~~\$100~~) (**\$250**) and less than or equal to **four hundred dollars (\$400)** are limited to ~~ten thirteen~~ percent (~~10%~~) (**13%**) of the amount over ~~one two hundred fifty~~ dollars (~~\$100~~) (**\$250**) and less than **four hundred dollars (\$400)**.

(3) ~~The total amount of finance charges may not exceed thirty-five dollars (\$35).~~ Finance charges on the amount of the small loan greater than **four hundred dollars (\$400)** and less than or equal to **five hundred dollars (\$500)** are limited to **ten percent (10%)** of the amount over **four hundred dollars (\$400)** and less than **five hundred dollars (\$500)**.

SECTION 24. IC 24-4.5-7-202, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 202. (1) Notwithstanding any other law, ~~only the following fees~~ **the only fee that** may be contracted for and received by the lender on a small loan ~~or subsequent refinancing.~~

(a) The parties may contract for a delinquency charge of not more than **five dollars (\$5)** on any installment not paid in full within ~~ten (10)~~ days after its scheduled due date.

(b) ~~A delinquency charge under this section may be collected only once on an installment; however long it remains in default. A delinquency charge may be collected any time after it accrues.~~

(2) ~~an additional charge may be made~~ **is a charge**, not to exceed twenty dollars (\$20), for each:

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- (a) return by a bank or other depository institution of a:
  - (i) dishonored check;
  - (ii) negotiable order of withdrawal; or
  - (iii) share draft issued by the ~~consumer~~; **borrower**; or
- (b) **time an authorization to debit the borrower's account is dishonored.**

This additional charge may be assessed one (1) time regardless of how many times a check **or an authorization to debit the borrower's account** may be submitted by the lender and dishonored.

SECTION 25. IC 24-4.5-7-301, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 301. (1) For purposes of this section, the lender shall disclose to the ~~consumer~~ **borrower** to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. ~~Renewing the small loan rather than paying the debt in full will require additional finance charges.~~ The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A ~~consumer~~ **borrower** may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a ~~consumer~~ **borrower** must inform the lender that the ~~consumer~~ **borrower** wants to rescind the small loan, and the ~~consumer~~ **borrower** must return the cash amount of the principal of the small loan to the lender."

- (3) The statement required in subsection (2) must be in:
  - (a) 14 point bold face type in the loan documents; and
  - (b) not less than one (1) inch bold print in the lending area of the business location.

(4) **When a borrower enters into a small loan, the lender shall provide the borrower with a pamphlet approved by the department that describes:**

- (a) **the availability of debt management and credit counseling**

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services; and

(b) the borrower's rights and responsibilities in the transaction.

SECTION 26. IC 24-4.5-7-401, AS AMENDED BY P.L.258-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 401. (1) ~~Except as provided in subsection (2);~~ A small loan may not be made for a term of less than fourteen (14) days.

(2) After the ~~consumer's third~~ **borrower's fifth** consecutive small loan, another small loan may not be made to that ~~consumer borrower~~ within seven (7) days after the ~~due~~ date of the ~~third~~ **fifth** consecutive small loan. ~~unless the new small loan is for a term of twenty-eight (28) days or longer.~~ **After the borrower's fifth consecutive small loan, the balance must be paid in full. However, the borrower and lender may agree to enter into a simple interest loan, payable in installments, under IC 24-4.5-3 within seven (7) days after the due date of the fifth consecutive small loan.**

SECTION 27. IC 24-4.5-7-402, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 402. (1) A lender is prohibited from making a small loan to a ~~consumer borrower~~ if the total payable amount of the small loan exceeds ~~twenty fifteen~~ percent ~~(20%)~~ **(15%)** of the ~~consumer's borrower's~~ monthly ~~net gross~~ income.

(2) A small loan may be secured by only one (1) check or ~~electronic authorization to debit the borrower's account~~ per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the ~~consumer borrower~~ plus loan finance charges contracted for and permitted.

(3) A ~~consumer borrower~~ may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the ~~consumer borrower~~ making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each ~~consumer borrower~~ a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A ~~consumer borrower~~ may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a ~~consumer borrower~~ must:

(a) inform the lender that the ~~consumer borrower~~ wants to

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rescind the small loan; and

(b) return the cash amount of the principal of the small loan to the lender.

**(6) A lender shall not enter into a renewal with a borrower. If a loan is paid in full, a subsequent loan is not a renewal.**

SECTION 28. IC 24-4.5-7-404, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 404. (1) **As used in this section, "commercially reasonable method of verification" means one (1) or more private consumer credit reporting services that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).**

**(2)** With respect to a small loan, ~~or subsequent refinancing~~, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

~~(2)~~ **(3)** A lender shall not make a small loan ~~or subsequent refinancing~~ that, when combined with another outstanding small loan owed to another lender, exceeds a total of ~~four~~ **five** hundred dollars ~~(\$400)~~ **(\$500)** when the face amounts of the checks written ~~or debits authorized~~ in connection with each loan are combined into a single sum. A lender shall not make a small loan to a ~~consumer borrower~~ who has two (2) or more small loans outstanding, regardless of the total value of the small loans.

~~(3)~~ **(4)** A lender complies with subsection ~~(2)~~ **(3)** if the ~~consumer borrower~~ represents in writing that the ~~consumer borrower~~ does not have any outstanding small loans with the lender, ~~or with any other another lender, an affiliate of the lender or another lender, or a separate entity involved in a business association with the lender or another lender in making small loans~~, and the lender independently verifies the accuracy of the ~~consumer's borrower's~~ written representation through ~~a commercially reasonable means~~: **method of verification**. A lender's method of verifying whether a ~~consumer borrower~~ has any outstanding small loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

(a) the lender's own records, including both records maintained at the location where the ~~consumer borrower~~ is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and

(b) available ~~department approved~~ **third party** databases.

**(5) The department shall monitor the effectiveness of private**

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consumer credit reporting services in providing the verification information required under subsection (4). If the department determines that one (1) or more commercially reasonable methods of verification are available, the department shall:

- (a) provide reasonable notice to all lenders identifying the commercially reasonable methods of verification that are available; and
- (b) require each lender to use one (1) of the identified commercially reasonable methods of verification as a means of complying with subsection (4).

~~(4)~~ (6) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

SECTION 29. IC 24-4.5-7-406, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 406. An agreement with respect to a small loan may not provide for charges as a result of default by the ~~consumer~~ **borrower** other than those authorized by this chapter. A provision in violation of this section is unenforceable.

SECTION 30. IC 24-4.5-7-409, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) **The following apply to small loans only when a check or an authorization to debit a borrower's account is used to defraud another person:**

- (a) IC 26-1-3.1-502.5 (surcharge after dishonor).
- (b) IC 26-2-7 (penalties for stopping payments or permitting dishonor of checks and drafts).
- (c) IC 34-4-30 (before its repeal).
- (d) IC 34-24-3 ~~and~~ (treble damages allowed in certain civil actions by crime victims).
- (e) IC 35-43-5 ~~apply to small loans only when a check is used to defraud another person:~~ (forgery, fraud, and other deceptions).
- (f) IC 24-4.5-3-404 (attorney's fees) does not apply to a small loan.

(3) A contractual agreement in a small loan transaction must include the language of subsection (2) in 14 point bold type.

(4) A person who violates this chapter:

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- (a) is subject to a civil penalty up to ~~one~~ **two** thousand dollars ~~(\$1,000)~~ **(\$2,000)** imposed by the department;
  - (b) is subject to the remedies provided in IC 24-4.5-5-202;
  - (c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;
  - (d) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and
  - (e) is liable to the ~~consumer~~ **borrower** for actual damages, statutory damages of ~~one~~ **two** thousand dollars ~~(\$1,000)~~ **(\$2,000)** per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.
- (5) The department may sue:
- (a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and
  - (b) for other equitable relief.

(6) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a ~~consumer~~ **borrower**. A ~~consumer~~ **borrower** is not required to exhaust any administrative remedies under this section or any other applicable law.

SECTION 31. IC 24-4.5-7-410, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

- (a) Threatening to use or using the criminal process in any state to collect on a small loan.
- (b) Threatening to take action against a ~~consumer~~ **borrower** that is prohibited by this chapter.
- (c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.
- (d) Contracting for and collecting attorney's fees on small loans made under this chapter.
- (e) Altering the date or any other information on a check **or an authorization to debit the borrower's account** held as security.
- (f) Using a device or agreement that **the department determines** would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:
  - (i) entering a different type of transaction with the ~~consumer~~;

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**borrower;**

- (ii) entering into a sales/leaseback arrangement;
- (iii) catalog sales; ~~or~~
- (iv) **entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or**
- (v) entering any other transaction with the ~~consumer~~ **borrower** that is designed to evade the applicability of this chapter.
- (g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.
- (h) Charging to cash a check representing the proceeds of a small loan.
- (i) Except as otherwise provided in this chapter:
  - (i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or
  - (ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.
- (j) Including any of the following provisions in a loan document:
  - (i) A hold harmless clause.
  - (ii) A confession of judgment clause.
  - (iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.
  - (iv) An assignment of or order for payment of wages or other compensation for services.
  - (v) A provision in which the ~~consumer~~ **borrower** agrees not to assert a claim or defense arising out of contract.
  - (vi) A waiver of any provision of this chapter.
- (k) Selling insurance of any kind in connection with the making or collecting of a small loan.

**(l) Entering into a renewal with a borrower.**

SECTION 32. IC 24-4.5-7-412, AS ADDED BY P.L.38-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 412. Upon the receipt of a check from a ~~consumer~~ **borrower** for a small loan, the lender shall immediately stamp the back of the check with an endorsement that states:

"This check is being negotiated as part of a small loan under

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IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker."

SECTION 33. IC 24-9 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

**ARTICLE 9. HOME LOAN PRACTICES**

**Chapter 1. Application**

**Sec. 1.** Except for IC 24-9-3-7(3), this article does not apply to:

- (1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

- (A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;
- (B) to be insured by the United States Department of Housing and Urban Development;
- (C) to be guaranteed by the United States Department of Veterans Affairs;
- (D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;
- (E) to be funded by the Indiana housing finance authority; or
- (F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

**Chapter 2. Definitions**

**Sec. 1.** The definitions in this chapter apply throughout this article.

**Sec. 2.** "Benchmark rate" means the interest rate established under Section 152 of the Federal Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that act by the Federal Reserve Board, including 12 CFR 226.32 and the Official Staff Commentary to the regulations as amended.

**Sec. 3.** "Bona fide discount points" means loan discount points that:

- (1) are knowingly paid by the borrower;
- (2) are paid for the express purpose of reducing the interest

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rate applicable to the loan;

(3) reduce the interest rate from an interest rate that does not exceed the benchmark rate; and

(4) are recouped within the first four (4) years of the scheduled loan payments;

if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest during the first four (4) years of the loan is equal to or greater than the dollar amount of loan discount points paid by the borrower.

Sec. 4. "Borrower" means a person obligated to repay a home loan, including a coborrower, cosigner, or guarantor.

Sec. 5. "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

Sec. 6. (a) "Creditor" means:

(1) a person:

(A) who regularly extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four (4) installments; and

(B) to whom the debt arising from a home loan transaction is initially payable; or

(2) a person who brokers a home loan, including a person who:

(A) directly or indirectly solicits, processes, places, or negotiates home loans for others;

(B) offers to solicit, process, place, or negotiate home loans for others; or

(C) closes home loans that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for the loans.

(b) The term does not include:

(1) a servicer;

(2) a state or local housing finance authority;

(3) any other state or local governmental or quasi-governmental entity; or

(4) an attorney providing legal services in association with the closing of a home loan.

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**Sec. 7. (a) "Deceptive act" means an act or a practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a person at the time of the transaction knowingly or intentionally:**

- (1) makes a material misrepresentation; or**
- (2) conceals material information regarding the terms or conditions of the transaction.**

**(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.**

**Sec. 8. (a) "High cost home loan" means a home loan with:**

- (1) a trigger rate that exceeds the benchmark rate; or**
- (2) total points and fees that exceed:**
  - (A) five percent (5%) of the loan principal for a home loan having a loan principal of at least forty thousand dollars (\$40,000); or**
  - (B) six percent (6%) of the loan principal for a home loan having a loan principal of less than forty thousand dollars (\$40,000).**

**(b) Beginning July 1, 2006, the dollar amounts set forth in this section are subject to change at the times and according to the procedure set forth in the provisions of IC 24-4.5-1-106 concerning the adjustment of dollar amounts in IC 24-4.5.**

**Sec. 9. "Home loan" means a loan, other than an open end credit plan or a reverse mortgage transaction, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:**

- (1) designed primarily for occupancy of one (1) to four (4) families; and**
- (2) that is or will be occupied by a borrower as the borrower's principal dwelling.**

**Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:**

- (1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).**
- (2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.**

**As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).**

**(b) The term does not include the following:**

- (1) Bona fide discount points.**

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(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation, if the terms of the loan do not include a prepayment penalty that exceeds two percent (2%) of the home loan principle.

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

**Sec. 11. "Political subdivision"** means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

**Sec. 12. "Rate"** means the interest rate charged on a home loan, based on an annual simple interest yield.

**Sec. 13. "Total loan amount"** means the principal of the home loan minus the points and fees that are included in the principal amount of the loan.

**Sec. 14. "Trigger rate"** means:

(1) for fixed rate home loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;

(2) for home loans in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or

(3) for all other home loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the home loan.

### **Chapter 3. Prohibited Lending Practices Generally**

**Sec. 1. (a)** A creditor making a home loan may not finance, directly or indirectly, any:

(1) credit life insurance;

(2) credit disability insurance;

(3) credit unemployment insurance;

(4) credit property insurance; or

(5) payments directly or indirectly for any cancellation suspension agreement or contract.

**(b)** Insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis are not considered to be financed by the creditor for purposes of this chapter.

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**Sec. 2. (a)** A creditor may not knowingly or intentionally replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a high cost home loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing.

**(b)** For purposes of this section, a "subsidized low rate loan" is a loan that carries a current interest rate of at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

**(c)** Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:

"This instrument secures a zero (0) interest rate or other subsidized low rate loan subject to IC 24-9-3-2."

**(d)** A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence or nonexistence of a zero (0) interest rate or other subsidized low rate loan.

**Sec. 3.** A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or part of the existing loan or debt.

**Sec. 4.** A creditor shall treat each payment made by a borrower in regard to a home loan as posted on the same business day as the payment was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or creditor's agent for making payments.

**Sec. 5. (a)** A home loan agreement may not contain a provision that permits the creditor, in the creditor's sole discretion, to accelerate the indebtedness without material cause.

**(b)** This section does not prohibit acceleration of a home loan in good faith due to the borrower's failure to abide by the material terms of the loan.

**Sec. 6. (a)** A creditor may not charge a fee for informing or

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transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) business days after the request is received by the creditor.

(b) For purposes of this section, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower.

**Sec. 7. A person may not:**

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or
- (3) engage in a deceptive act in connection with a home loan.

**Sec. 8. A person seeking to enforce section 7(3) of this chapter, may not knowingly or intentionally intimidate, coerce, or harass another person.**

**Sec. 9. It is unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age, if the applicant has the ability to contract.**

**Chapter 4. Additional Prohibitions for High Cost Home Loans**

**Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:**

- (1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.
- (2) Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.
- (3) A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.
- (4) A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the

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offer must be clearly labeled in large bold type and must include the following disclosure:

**"LOAN PRODUCT CHOICE**

**I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."**

**(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:**

**"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."**

**(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:**

**"This instrument secures a high cost home loan as defined in IC 24-9-2-8."**

**(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.**

**Sec. 2. A creditor may not knowingly or intentionally:**

**(1) refinance a high cost home loan by charging points and fees on the part of the proceeds of the new high cost home loan that is used to refinance the existing high cost loan within four (4) years of the origination of the existing high cost home loan; or**

**(2) divide a home loan transaction into multiple transactions with the effect of evading this article. Where multiple transactions are involved, the total points and fees charged in all transactions shall be considered when determining whether the protections of this section apply.**

**Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan agreement may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments under the high cost home loan agreement unless the payment becomes due and payable at least one hundred twenty (120) months after the date of the high cost home loan. This prohibition does not apply if:**

**(1) the payment schedule is adjusted to account for the seasonal or irregular income of the borrower; or**

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(2) the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Sec. 4. (a) Except as provided in subsection (b), a high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the high cost home loan because the regular periodic payments do not cover the full amount of interest due.

(b) This section does not apply to a temporary forbearance that is requested by a borrower regarding a high cost home loan.

Sec. 5. A high cost home loan may not contain a provision that increases the interest rate after default. However, this section does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the high cost home loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

Sec. 6. A high cost home loan may not include terms under which more than two (2) periodic payments required under the high cost home loan are consolidated and paid in advance from the high cost home loan proceeds provided to the borrower.

Sec. 7. A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counseling agency certified by:

(1) the United States Department of Housing and Urban Development; or

(2) the department of commerce under IC 4-4-3-8(b)(15); at the same time as the good faith estimates are provided to the borrower in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the borrower's debt to income ratio, there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.

(c) Commercially reasonable practices include the use of:

(1) the debt to income ratio:

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- (A) listed in 38 CFR 36.4337(c)(1); and
- (B) defined in 38 CFR 36.4337(d); and
- (2) the residual income guidelines established under:
  - (A) 38 CFR 36.4337(e); and
  - (B) United States Department of Veterans Affairs form 26-6393.

**Sec. 9. A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:**

- (1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and
- (2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

**Sec. 10. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer a payment due under the terms of a high cost home loan.**

**Sec. 11. A creditor may not make a high cost home loan unless the creditor has given the following notice, in writing, to the borrower not later than the time that notice is required under 12 CFR 226.31(c):**

**"NOTICE TO BORROWER**

**YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD COMPARE LOAN RATES, COSTS, AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE, COSTS, AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.**

**IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY**

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**MONEY YOU HAVE PAID IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.**

**YOU SHOULD CONSULT AN ATTORNEY AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISER REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE FROM THE INDIANA DEPARTMENT OF COMMERCE. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.**

**ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."**

**Sec. 12. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high cost home loan agreement that:**

- (1) requires arbitration of a claim or defense;**
- (2) allows a party to require a borrower to assert a claim or defense in a forum that is:**
  - (A) less convenient;**
  - (B) more costly; or**
  - (C) more dilatory;**

**for the resolution of the dispute than an Indiana court in which the borrower may otherwise bring a claim or defense; or**

- (3) limits in any way any claim or defense the borrower may have;**

**is unconscionable and void.**

#### **Chapter 5. Claims, Defenses, Remedies**

**Sec. 1. (a) A person who purchases or is otherwise assigned a high cost home loan is subject to all affirmative claims and any**

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defenses with respect to the high cost home loan that the borrower could assert against a creditor or broker of the high cost home loan. However, this section does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan. A purchaser or an assignee is presumed to have exercised reasonable due diligence if the purchaser or assignee:

- (1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit the purchase or acceptance of the assignment of any high cost home loans;
- (2) requires by contract that a seller or an assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

- (A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or
- (B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

- (3) exercises reasonable due diligence:

- (A) at the time of purchase or assignment of home loans; or
- (B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

- (4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

- (A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and
- (B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

- (1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:
  - (A) an action to enjoin foreclosure or to preserve or obtain

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- possession of the dwelling that secures the loan is initiated;
- (B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or
- (C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;
- (2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and
- (3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:
  - (A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;
  - (B) the debt arising from the loan is accelerated; or
  - (C) the loan is more than sixty (60) days in default;
 at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

Sec. 2. (a) If a creditor asserts that grounds for acceleration under the terms of a high cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or a person authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise may cure the default and reinstate the high cost home loan by tendering the amount or performance as specified in the security instrument.

(b) If the borrower cures the default on a high cost home loan, the original loan terms shall be reinstated, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.

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**Sec. 3. (a)** A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the state in which the property securing the high cost home loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this article.

**(b)** This section is not intended and shall not be construed to allow any claim or defense otherwise barred by any statute of limitation or repose.

**Sec. 4. (a)** A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

- (1)** Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.
- (2)** Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.
- (3)** Costs and reasonable attorney's fees.

**(b)** A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

**(c)** The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of law is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

**(d)** The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

**(e)** Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1)** notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action;

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(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

Sec. 5. (a) If the creditor or an assignee establishes by a preponderance of evidence that a violation of this article is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 4 of this chapter except in the case of a refusal to make a refund.

(b) Except as provided in subsection (c), a creditor in a high cost home loan who in good faith fails to comply with this article is not considered to have violated this article if the creditor does the following before receiving notice of the failure from the borrower:

(1) Not later than ninety (90) days after the date of the loan closing:

(A) makes appropriate restitution to the borrower of any amounts collected in error; and

(B) takes necessary action to make all appropriate adjustments to the loan to correct the error.

(2) Not later than one hundred twenty (120) days after the date of the loan closing, notifies the borrower of:

(A) the error; and

(B) the amount of the required restitution or adjustment.

(c) Subsection (b) does not apply unless the creditor establishes that the compliance failure was not intentional and resulted from a bona fide error of fact or law, notwithstanding the maintenance of procedures reasonably adopted to avoid the errors.

Sec. 6. The rights conferred by this article are in addition to rights granted under any other law.

#### Chapter 6. Reporting Requirements

Sec. 1. (a) A servicer of a high cost home loan shall report at least once each calendar quarter to a nationally recognized consumer credit reporting agency both the favorable and

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unfavorable payment history information of the borrower on payments due to the creditor on a high cost home loan.

(b) This section does not prohibit a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or an unresolved dispute with a borrower and does not apply to high cost home loans held or serviced by a lender for less than ninety (90) days.

#### **Chapter 7. State Power to Regulate Lending**

**Sec. 1.** The state is the sole regulator of the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which the business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

#### **Sec. 2.** Political subdivisions may not:

- (1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules that disqualify persons from doing business with a municipality and that are based upon lending terms or practices; or
- (2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:
  - (A) are subject to the jurisdiction of the department of financial institutions;
  - (B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;
  - (C) are chartered by the United States Congress to engage in secondary market mortgage transactions;
  - (D) are created by the Indiana housing finance authority; or
  - (E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D).

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## **Chapter 8. Penalties and Enforcement**

**Sec. 1.** A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor; and
- (2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

**Sec. 2. (a)** Beginning July 1, 2005, the attorney general and the attorney general's homeowner protection unit established under IC 4-6-12 shall enforce this article for any violation occurring within five (5) years after the making of a home loan.

(b) The attorney general may refer a matter under section 1 of this chapter to a prosecuting attorney for enforcement.

**Sec. 3. (a)** The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

**Sec. 4.** The attorney general may file complaints with any of the agencies listed in IC 4-6-12-4 to implement this chapter.

## **Chapter 9. Fees**

**Sec. 1.** The county recorder shall assess a fee of three dollars (\$3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The fee shall be paid to the county treasurer at the end of each calendar month as provided in IC 36-2-7-10(a).

**Sec. 2.** The county auditor shall credit fifty cents (\$0.50) of the fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded to the county recorder's records perpetuation fund established under IC 36-2-7-10(c).

**Sec. 3.** On or before June 20 and December 20 of each year, after completing an audit of the county treasurer's monthly reports required by IC 36-2-10-16, the county auditor shall distribute to

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the auditor of state two dollars and fifty cents (\$2.50) of the mortgage recording fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded by the county recorder. The auditor of state shall deposit the money in the state general fund to be distributed as described in section 4 of this chapter.

**Sec. 4. On or before June 30 and December 31 of each year the auditor of state shall distribute one dollar and twenty-five cents (\$1.25) of the mortgage recording fee to the home ownership education account established by IC 4-4-3-23 and one dollar and twenty-five cents (\$1.25) of the mortgage recording fee to the homeowner protection unit account established by IC 4-6-12-9.**

SECTION 34. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

- (1) (A) create;
- (2) (B) deliver;
- (3) (C) acquire; or
- (4) (D) sell;

a product, a service, or an investment that is available to or offered by; **or**

**(2) to engage in other activities authorized for;**

national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

- (1) granted to national banks; but
- (2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the bank from exercising the requested rights and privileges only if the members find that:

- (1) national banks domiciled in Indiana do not possess the

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requested rights and privileges; or

(2) the exercise of the requested rights and privileges by the bank would adversely affect the safety and soundness of the bank.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the bank may exercise the requested rights and privileges only if the bank receives prior written approval from the department. However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the bank's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a bank in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a bank exercises rights and privileges granted to national banks domiciled in Indiana, all banks may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all banks would not adversely affect their safety and soundness.

(h) If the department denies the request of a bank under this section to exercise any rights and privileges that are granted to national banks, the bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the bank is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 35. IC 28-1-20-4, AS AMENDED BY P.L.258-2003, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (k), it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, **a bank holding company, a subsidiary of a bank or trust company, a subsidiary of a bank holding company, a subsidiary of a savings bank, a subsidiary of a savings association, or a corporate fiduciary** organized or reorganized under IC 28 or statutes in effect at the time of

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organization or reorganization or under the laws of the United States):

- (1) to use the word "bank", "banc", or "banco" as a part of the name or title of the person, firm, or corporation; or
- (2) to advertise or represent the person, firm, limited liability company, or corporation to the public:
  - (A) as a bank or trust company or a corporate fiduciary; or
  - (B) as affording the services or performing the duties which by law only a bank or trust company or a corporate fiduciary is entitled to afford and perform.

(b) A financial institution organized under the laws of any state or the United States that establishes a branch office under this title is authorized to do business at that branch using a name other than the name of its home office.

(c) Notwithstanding the prohibitions of this section, an out-of-state financial institution with the word "bank" in its legal name may use the word "bank" if the financial institution is insured by the Federal Deposit Insurance Corporation or its successor.

(d) Notwithstanding subsection (a), a building and loan association organized under IC 28-4 (before its repeal) may include in its name or title:

- (1) the words "savings bank"; or
- (2) the word "bank" if the name or title also includes either the words "savings bank" or letters "SB".

A building and loan association that includes "savings bank" in its title under this section does not by that action become a savings bank for purposes of IC 28-6.1.

(e) The name or title of a savings bank governed by IC 28-6.1 must include the words "savings bank" or the letters "SB".

(f) A savings association may include in its name the words "building and loan association".

(g) Notwithstanding subsection (a), a bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that by law a bank or trust company only is entitled to afford and perform.

(h) The department is authorized to investigate the business affairs of any person, firm, limited liability company, or corporation that uses "bank", "banc", or "banco" in its title or holds itself out as a bank, corporate fiduciary, or trust company for the purpose of determining whether the person, firm, limited liability company, or corporation is

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violating any of the provisions of this article, and, for that purpose, the department and its agents shall have access to any and all of the books, records, papers, and effects of the person, firm, limited liability company, or corporation. In making its examination, the department may examine any person and the partners, officers, members, or agents of the firm, limited liability company, or corporation under oath, subpoena witnesses, and require the production of the books, records, papers, and effects considered necessary. On application of the department, the circuit or superior court of the county in which the person, firm, limited liability company, or corporation maintains a place of business shall, by proper proceedings, enforce the attendance and testimony of witnesses and the production and examination of books, papers, records, and effects.

(i) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a financial institution.

(j) A person, firm, limited liability company, or corporation who violates this section is subject to a penalty of five hundred dollars (\$500) per day for each and every day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

(k) The word "bank", "banc", or "banco" may not be included in the name of a corporate fiduciary.

(l) A person, firm, limited liability company, or corporation may not use the name of an existing bank or bank holding company or a name confusingly similar to that of an existing bank or bank holding company when marketing to or soliciting business from a customer or prospective customer if the reference to the existing bank or bank holding company is:

- (1) without the consent of the existing bank or bank holding company; and
- (2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:
  - (A) originated from;
  - (B) is endorsed by; or
  - (C) is in any other way the responsibility of;

the existing bank or bank holding company.

(m) An existing bank or bank holding company may, in addition to any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the

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marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists in using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars (\$15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

(n) Nothing in subsection (l) or (m) prohibits the use of or reference to the name of an existing bank or bank holding company in marketing materials or solicitations, if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

- (1) originated from;
- (2) is endorsed by; or
- (3) is in any other way the responsibility of;

the existing bank or bank holding company.

(o) The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 36. IC 28-7-1-9, AS AMENDED BY P.L.258-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. A credit union has the following powers:

- (1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.
- (2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.
- (3) To make loans to officers, directors, or committee members, but only if:
  - (A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;
  - (B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;
  - (C) the loan is approved by the credit committee or loan officer; and

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- (D) the borrower takes no part in the consideration of or vote on the application.
- (4) To invest in any of the following:
- (A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.
  - (B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).
  - (C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.
  - (D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).
  - (E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).
  - (F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5 and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.
  - (G) Corporate credit unions.
  - (H) Federal funds or similar types of daily funds transactions with other financial institutions.
  - (I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.
  - (J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than five percent (5%) of the total paid in and unimpaired capital of the credit union may be invested under this clause.

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- (5) To deposit its funds into:
  - (A) depository institutions that are federally insured; or
  - (B) state chartered credit unions that are privately insured by an insurer approved by the department.
- (6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.
- (7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.
- (8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.
- (9) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.
- (10) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.
- (11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.
- (12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.
- (13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.
- (14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

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- (A) the coverage is placed with an insurance company licensed to do business in Indiana; and
  - (B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.
- (15) To sell and cash negotiable checks, travelers checks, and money orders for members.
- (16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.
- (17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.
- (18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.
- (19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.
- (20) A credit union may exercise any rights and privileges that are:
- (A) granted to federal credit unions; but
  - (B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;
- if the credit union complies with section 9.2 of this chapter.
- (21) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.
- (22) To purchase assets of another credit union and to assume the

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liabilities of the selling credit union.

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ~~ten~~ **twenty** percent ~~(10%)~~ **(20%)** of the total assets of that credit union, excluding those public funds.

(24) To join the National Credit Union Administration Central Liquidity Facility.

(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

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(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

SECTION 37. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

- (1) (A) create;
- (2) (B) deliver;
- (3) (C) acquire; or
- (4) (D) sell;

a product, a service, or an investment that is available to or offered by; **or**

**(2) to engage in other activities authorized for;**

federal credit unions domiciled in Indiana.

(b) A credit union that intends to exercise any rights and privileges that are:

- (1) granted to federal credit unions; but
- (2) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to federal credit unions that the credit union intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the credit union.

(c) The department shall promptly notify the requesting credit union of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the credit union may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the credit union from exercising the requested rights and privileges only if the members find that:

- (1) federal credit unions domiciled in Indiana do not possess the

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requested rights and privileges; or

(2) the exercise of the requested rights and privileges by the credit union would adversely affect the safety and soundness of the credit union.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the credit union's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the credit union may exercise the requested rights and privileges only if the credit union receives prior written approval from the department. However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the credit union's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a credit union exercises rights and privileges granted to federal credit unions domiciled in Indiana, all credit unions may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all credit unions would not adversely affect their safety and soundness.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 38. IC 28-8-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as provided in section 29 of this chapter, an application must be accompanied by a security device that secures the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

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- (1) sale and issuance of payment instruments; or
- (2) transmission of money.
- (b) The security device required under subsection (a) must:
  - (1) be in an amount as provided under subsection (c);
  - (2) run to the state; and
  - (3) be in a form acceptable to the director.
- (c) The security device must be in an amount calculated as follows:
  - STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.
  - STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars (\$10,000).
  - STEP THREE: Add ~~one~~ **two** hundred thousand dollars (~~\$100,000~~) **(\$200,000)** to the product determined under STEP TWO.
  - STEP FOUR: Pay the amount that is the lesser of:
    - (1) the sum determined in STEP THREE; or
    - (2) ~~two~~ **three** hundred thousand dollars (~~\$200,000~~) **(\$300,000)**.
- (d) If the security device filed is a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond.

SECTION 39. IC 28-8-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

- (1) at one (1) or more locations directly or indirectly owned by the licensee; or
- (2) through one (1) or more authorized delegates.
- (b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the required security device required under section 27 of this chapter or deposit required under section 29 of this chapter.
- (c) Except as provided in subsection (d), a licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.
- (d) The director may waive the permissible investments requirement in subsection (c) if the dollar volume of a licensee's outstanding payment instruments does not exceed:
  - (1) the security device posted by the licensee under section 27 of this chapter; or

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(2) the deposit made by the licensee under section 29 of this chapter.

(e) A licensee that is a corporation must at all times be in good standing with the secretary of state of the state in which the licensee was incorporated.

SECTION 40. IC 28-10-1-1, AS AMENDED BY P.L.258-2003, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2003~~ 2004.

SECTION 41. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) As used in this section:

- (1) "federally chartered" means an entity organized or reorganized under the law of the United States; and
- (2) "state chartered" means an entity organized or reorganized under the law of Indiana or another state.

(b) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity only to the same extent that the department determines the provision is applicable to the:

- (1) same; or
- (2) functionally equivalent;

type of federally chartered entity.

(c) A state chartered entity seeking an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the provision as applied to a federally chartered entity shall submit a letter to the department:

- (1) describing in detail; and
- (2) documenting the federal preemption of;

the provisions from which it seeks exemption. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the requesting entity.

(d) The department shall notify the requesting entity within ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 for ninety (90) days after the date on which the department receives the letter, unless otherwise notified by the

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department. This period may be extended if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

not later than ninety (90) days after the department receives the requesting entity's letter; and

(2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section,

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the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;  
the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.

SECTION 42. IC 28-13-16-4, AS AMENDED BY P.L.258-2003, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its subsidiaries may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized ~~by~~ as "activity eligible for notice" procedures under 12 CFR ~~5.34(e)(2)(ii).~~ 5.34(e).

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

SECTION 43. IC 28-13-16-5, AS ADDED BY P.L.215-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish a nonqualifying subsidiary by submitting an application to the department containing:

- (1) a complete description of the financial institution's investment in the subsidiary;
- (2) the activity to be conducted; and
- (3) a representation that the activity:
  - (A) could be performed by a financial institution under statutory authority of this title;
  - (B) is a part of or incidental to the business of banking as determined by the director; or
  - (C) has been authorized ~~by~~ **as "activity eligible for notice" procedures under 12 CFR 5.34(e)(2)(ii): 5.34(e).**

The department shall notify the requesting financial institution of the department's receipt of the application.

SECTION 44. IC 28-15-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this section, "rights and privileges" means the power:

- (1) to:
  - ~~(1)~~ (A) create;
  - ~~(2)~~ (B) deliver;
  - ~~(3)~~ (C) acquire; or
  - ~~(4)~~ (D) sell;

~~a product or service~~ **product, a service, or an investment** that is available to or offered by; **or**

- (2) **to engage in other activities authorized for;**  
federal savings associations **domiciled in Indiana.**

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

(c) A savings association that intends to exercise any rights and privileges that are:

- (1) granted to federal savings associations; but
- (2) not authorized for savings associations under:
  - (A) the Indiana Code (except for this section); or
  - (B) a rule adopted under IC 4-22-2;

shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

(d) The department shall promptly notify the requesting savings

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association of its receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings association may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(e) The department, through its members, may prohibit the savings association from exercising the requested rights and privileges only if the members find that:

- (1) federal savings associations in Indiana do not possess the requested rights and privileges; or
- (2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings association letter raises issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings association may exercise the requested rights and privileges only if the savings association receives prior written approval from the department. However:

(1) the members must:

- (A) approve or deny the requested rights and privileges; or
- (B) convene a hearing;

not later than sixty (60) days after the department receives the savings association's letter; and

- (2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(g) The exercise of rights and privileges by a savings association in compliance with and in the manner authorized by this section does not constitute a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(h) Whenever, in compliance with this section, a savings association exercises rights and privileges granted to national savings associations domiciled in Indiana, all savings associations may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all savings associations would not adversely affect their safety and soundness.

SECTION 45. IC 32-29-1-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.5. A mortgagee or a**

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**mortgagee's assignee or representative may not require a mortgagor, as a condition of receiving or maintaining a mortgage, to obtain hazard insurance coverage against risks to improvements on the mortgaged property in an amount exceeding the replacement value of the improvements.**

SECTION 46. IC 34-7-4-2, AS AMENDED BY SEA 263-2004, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2. Statutes outside IC 34 providing causes of action or procedures include the following:

- (1) IC 4-21.5-5 (Judicial review of administrative agency actions).
- (2) IC 22-3-4 (Worker's compensation administration and procedures).
- (3) IC 22-4-17 (Unemployment compensation system, employee's claims for benefits).
- (4) IC 22-4-32 (Unemployment compensation system, employer's appeal process).
- (5) IC 22-9 (Civil rights actions).
- (6) IC 24-9 (Home loans).**
- (7) IC 31-14 (Paternity).
- ~~(7)~~ **(8)** IC 31-15 (Dissolution of marriage and legal separation).
- ~~(8)~~ **(9)** IC 31-16 (Support of children and other dependants).
- ~~(9)~~ **(10)** IC 31-17 (Custody and visitation).
- ~~(10)~~ **(11)** IC 31-19 (Adoption).
- ~~(11)~~ **(12)** IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1, IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12, IC 32-30-13, and IC 32-30-14 (Real property).
- ~~(12)~~ **(13)** IC 33-43-4 (Attorney liens).

SECTION 47. IC 36-2-7-10, AS AMENDED BY P.L.2-2003, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 10. (a) The county recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

(b) The county recorder shall charge the following:

- (1) Six dollars (\$6) for the first page and two dollars (\$2) for each additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

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(2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar (\$1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar (\$1) for each cross-reference of a recorded document.

(5) One dollar (\$1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records produced by a photographic process, and two dollars (\$2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars (\$5) for acknowledging or certifying to a document.

(7) Five dollars (\$5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 32-19-4-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars (\$3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

**(11) Three dollars (\$3) for each mortgage on real estate recorded, in addition to other fees required by this section, distributed as follows:**

**(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.**

**(B) Two dollars and fifty cents (\$2.50) is to be distributed to the auditor of state on or before June 20 and December**

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**20 of each year as provided in IC 24-9-9-3.**

(c) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under subsection (b)(5), (b)(8), (b)(9), and (b)(10), **and fifty cents (\$0.50) from revenue received under subsection (b)(11)**, shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment.

(d) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(e) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(f) The county recorder may not tax or collect any fee for:

- (1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or
- (2) performing any service under any of the following:
  - (A) IC 6-1.1-22-2(c).
  - (B) IC 8-23-7.
  - (C) IC 8-23-23.
  - (D) IC 10-17-2-3.
  - (E) IC 10-17-3-2.
  - (F) IC 12-14-13.
  - (G) IC 12-14-16.

(g) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

SECTION 48. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2004]: IC 24-4.5-7-407; IC 24-4.5-7-408.

SECTION 49. [EFFECTIVE UPON PASSAGE] (a) **Notwithstanding IC 4-4-3-8(b)(15), as added by this act, the department of commerce shall carry out the duties imposed on it under IC 4-4-3-8(b)(15), as added by this act, under interim written guidelines approved by the executive director of the department of commerce.**

(b) **This SECTION expires on the earlier of the following:**

- (1) **The date rules are adopted under IC 4-4-3-8(b)(15), as added by this act.**
- (2) **July 1, 2005.**

SECTION 50. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4,**

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both as added by this act, with respect to a loan made before  
January 1, 2005.

SECTION 51. An emergency is declared for this act.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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